

Amendment No. 1 to SB2175

Southerland
Signature of Sponsor

AMEND Senate Bill No. 2175

House Bill No. 2303*

by deleting all language after the caption and substituting instead the following:

WHEREAS, the purpose of this act is to ensure that companion animals have a safe and healthy environment in which to live; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following as a new chapter:

62-12-101. This act shall be known and may be cited as the "Commercial Dog Breeder Act."

62-12-102. As used in this chapter:

(1) "Adult dog" means a *Canis familiaris* or *Canis familiaris* hybrid six (6) months of age or older;

(2) "Business hours" means between nine o'clock a.m. (9:00 a.m.) prevailing time and five o'clock p.m. (5:00 p.m.), Monday through Friday, except for legal federal holidays;

(3) "Chief law enforcement officer" means the duly elected sheriff or appointed police chief of a municipality;

(4) "Commercial dog breeder" means any person who possesses or maintains, under the person's immediate control, sixteen (16) or more intact female adult dogs in this state at one (1) time for the primary purpose of breeding or selling dogs, or who sells forty (40) or more dogs within a calendar year;

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(5) "Commissioner" means the commissioner of commerce and insurance, the commissioner's designee or, in the absence of the commissioner's designee, who shall be an employee of the state, or a vacancy in the office of commissioner, a deputy commissioner;

(6) "Consumer" means:

(A) Any natural person purchasing a dog from a commercial dog breeder; and

(B) Does not include a business or corporation engaged in sales or services;

(7) "Department" means the department of commerce and insurance;

(8) "Euthanasia" means a method of humanely terminating the life of a dog that may be performed only by a licensed veterinarian or certified euthanasia technician;

(9) "Housing facility" means any land, premises, shed, barn, building, trailer, or other structure or area, housing, or intended to house, dogs;

(10) "Intact" means a female dog that has not been altered by surgical, chemical, or physical means and still has the capability of breeding;

(11) "Owner" means any person who has a property right in a dog;

(12) "Person" means an individual, corporation, limited liability company, firm, company, association, or other legal entity;

(13) "Releasing agency" means:

(A) A public animal shelter; or

(B) A private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to dogs, or other similar entity or home-based rescue that releases companion dogs for adoption; and

(14) "Veterinarian" means a person who is licensed and in good standing to practice veterinary medicine pursuant to the Tennessee Veterinary Practice Act of 1967, compiled in title 63, chapter 12.

62-12-103. No person shall operate, attempt to operate, or offer to operate as a commercial dog breeder without first registering with the department in accordance with this chapter. All registrations under this chapter shall expire two (2) years from the date of the registration or the renewal of the registration. Any person operating, attempting to operate, offering to operate, or intending to operate as a commercial dog breeder shall be registered with the department in accordance with this chapter. An individual shall be at least eighteen (18) years of age to register.

62-12-104.

(a) A person seeking to register as a commercial dog breeder shall apply on a form furnished by the department, which shall include such information as the commissioner may require. An application form, implementing rules, and other necessary forms shall be maintained on the department's web site.

(b) No person seeking to register as a commercial dog breeder, nor any person who has a substantial interest, financial or otherwise, in such applicant, shall exercise control over, or maintain an interest in, any releasing agency.

(c) Each application shall contain proof that each person seeking to register as a commercial dog breeder provides a program of veterinary care

signed by a veterinarian that includes such information as the commissioner may require.

(d) Prior to the department registering the applicant as a commercial dog breeder, the department may perform an on-site inspection to confirm that the premises of any location used to conduct the business of commercial dog breeding by the applicant conforms to this chapter and the rules promulgated pursuant to this chapter prior to the issuance of a registration. Inspections shall only be conducted by an employee of the state or a person acting on behalf of the commissioner.

(e)

(1) On each registration and renewal form, each registrant or applicant shall declare, under penalty of perjury pursuant to § 39-16-702(a)(3), whether the registrant has ever been convicted of a violation of this chapter, has a conviction for or pled nolo contendere to a violation of title 39, chapter 14, part 2, or domestic assault under § 39-13-111, or has a conviction for an offense in another state with elements the same or similar to any of the offenses specified in this subdivision (e)(1).

(2) A person who has been convicted of a violation of this chapter or has a conviction or pled nolo contendere to, a violation of an offense in title 39, chapter 14, part 2, domestic assault under § 39-13-111, or has a conviction for an offense in another state with elements the same or similar to any of the offenses specified in this subdivision (e)(2) shall be prohibited from registering under this chapter for ten (10) years from the date of the completion of any sentence or court ordered probation, whichever is later.

(f) Registration pursuant to this section is nontransferable and a substantial change of ownership of any corporation, limited liability company, partnership, or other entity holding a registration shall require the registrant to obtain a new registration.

62-12-105.

(a) A registrant shall maintain all records required by this chapter and rules promulgated to implement this chapter for a period of five (5) years from the date a dog is sold, euthanized, or disposed of, unless otherwise ordered by the department or a court.

(b) The original of all records to be maintained on a dog shall be given to the purchaser of the dog at the time of purchase and the registrant must maintain a copy of the records.

62-12-106. The commissioner, by rule, shall establish a fee schedule pursuant to this chapter. The fee schedule may include, but is not limited to, the following fees:

- (1) Initial registration application fee;
- (2) Initial registration fee;
- (3) Initial inspection fee;
- (4) Inspection fee pursuant to § 62-12-107;
- (5) Registration renewal fee;
- (6) Returned check fee;
- (7) Duplicate registration fee;
- (8) Change of address fee;
- (9) New location fee;
- (10) Change of name fee; and
- (11) Any other fees necessary and adequate to cover the administrative costs associated with the registration program.

62-12-107.

(a) The department is authorized to enforce violations of this part in the same manner as the department enforces other regulatory programs within its jurisdiction.

(b) Inspections shall:

(1) Be conducted during business hours or another time mutually agreed upon with the registrant at the location being inspected; and

(2) Be limited in scope to items in an inspection checklist that shall be published on the department's web site; provided, that violations of other items that are plainly visible may be documented.

(c) A registrant shall not unreasonably fail to cooperate with an authorized representative of the department acting in accordance with this section.

(d) If an inspection reveals a violation of this chapter or rules promulgated pursuant to this chapter, the department shall give the commercial dog breeder a detailed list of the violations found during the inspection within a reasonable time after the inspection.

(e) If an inspection is performed upon a registrant, the registrant shall pay an inspection fee as set by the commissioner for each inspection.

62-12-108.

(a) The commissioner may revoke, suspend, or refuse to issue or renew a commercial dog breeder registration of any person for one (1) or more of the following reasons:

(1) Any violation of this chapter or the rules promulgated pursuant to this chapter;

(2) Conviction or entering a plea of guilty to any criminal offense found in title 39, chapter 14, part 2, or a conviction for an offense in another state with elements the same or similar to any of the offenses specified in title 39, chapter 14, part 2;

(3) Conviction or entering a plea of guilty to domestic assault under § 39-13-111, or an offense in another state with elements the same or similar to domestic assault;

(4) A violation of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, that relates to the operation of dog kennels or commercial dog breeding;

(5) Fraud or deceit in obtaining registration; or

(6) Dishonesty, fraud, or gross negligence in the practice of commercial dog breeding.

(b) The commissioner may revoke, suspend, or refuse to issue or renew a commercial dog breeder registration to any partnership, corporation, limited liability company, or other entity of any kind in which a person with a substantial ownership interest or a person employed by such an entity could have such action taken pursuant to subsection (a).

(c) In addition to or in lieu of any other disciplinary actions, the commissioner may impose a civil penalty not to exceed one thousand dollars (\$1,000) for each violation of this chapter or the rules promulgated hereunder, including acting as a commercial dog breeder without first registering in violation of § 62-12-103. Each day of continued violation constitutes a separate violation.

62-12-109. A registration issued under this chapter shall be renewable biennially upon application and payment of the renewal fee by the registrant, if the registrant has complied with this chapter and any renewal requirements established by the

commissioner. The commissioner may charge a late fee as set by rule per month or part of a month that a registration renewal is late; provided, however, that failure to file a renewal within sixty (60) days of the expiration of a registration shall result in the registration becoming invalid and the registrant shall be required to obtain a new registration.

62-12-110.

(a) Any person whose registration was previously revoked shall not:

(1) Operate as a commercial dog breeder unless the person is later issued a registration under this chapter;

(2) Be eligible to apply for another registration for a period of five (5) years from the date of revocation unless the reason for the revocation was that the person was convicted of, entered a plea of guilty or pled nolo contendere to a violation of this chapter, any offense in title 39, chapter 14, part 2, domestic assault, or an offense in another state with elements the same or similar to any of the offenses specified this subdivision (a)(2), in which case such person shall not be eligible to apply for another registration for a period of ten (10) years from the date of revocation or completion of any sentence or court ordered probation, whichever is later; provided, however, nothing in this subdivision (a)(2) shall be construed to prohibit the commissioner from denying an application based on the revocation or the grounds for such revocation after the mandatory period of ineligibility has expired; or

(3) Be registered in the registrant's own name or in any other manner for the time periods described in subdivision (a)(2); nor may any partnership, firm, corporation, or other legal entity in which the registrant

has a substantial interest, financial or otherwise, be registered for the time periods described in subdivision (a)(2).

(b) The commissioner may refuse to issue a registration to any person who was an officer, agent, or employee of a registrant whose registration has been revoked, and who was responsible for or participated in any violation upon which the revocation was based.

62-12-111. Nothing in this chapter shall authorize to the commissioner or any other person to confiscate dogs in the possession of, or maintained by, a commercial dog breeder. Upon reasonable belief that a violation of title 39, chapter 14, part 2, is occurring on the property of a commercial dog breeder, a person may notify any applicable law enforcement agency immediately and in writing. The chief law enforcement officer of the county shall authorize only a POST-certified or POST-compliant law enforcement officer to conduct a confiscation of dogs. The law enforcement officer may enlist the assistance of a veterinarian or other personnel as necessary to effectuate the confiscation and treatment of dogs.

62-12-112.

(a) The commissioner, in consultation with commercial breeders and veterinarians who practice small animal care, is authorized to promulgate rules to effectuate the purposes of this chapter. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The rules may include, but are not limited to, the following:

(1) A fee schedule as described in § 62-12-106;

(2) Operating standards and facility requirements for commercial dog breeders; and

(3) Requirements for:

- (A) Facilities and housing;
- (B) Mobile or traveling housing facilities;
- (C) Primary enclosures;
- (D) Compatible grouping of dogs;
- (E) Adequate veterinary care;
- (F) Exercising, feeding, and watering for dogs;
- (G) Cleaning, sanitization, housekeeping, and pest control; and
- (H) Commercial dog breeder employees.

(c) Rules containing standards and requirements established by the commissioner shall assist in the development and promotion of best practices for commercial dog breeders; however, no rule shall prevent a registrant from maintaining dogs in a residence if the registrant is otherwise in compliance with this chapter and the rules promulgated to implement this chapter. In establishing the rules, the commissioner may consider, without limitation:

(1) Corresponding standards established by the American Veterinary Medical Association (AVMA) in its Model Bill and Regulations to Assure Appropriate Care for Dogs Intended to Use as Pets as published April 9, 2010, and any subsequent updates;

(2) Corresponding standards established by the American Kennel Club (AKC) in its Care and Conditions of Dogs policy as updated June 1, 2012, and any subsequent updates; and

(3) Corresponding rules, regulations, policies, forms, and materials developed in other states.

62-12-113. Nothing in this chapter shall preempt or limit the powers of any county, municipality, or other unit of local government from adopting ordinances that are more stringent than this chapter.

62-12-114.

(a) Possession of sixteen (16) or more intact female adult dogs at one (1) time in this state or the sale of forty (40) or more dogs within any calendar year shall constitute prima facie evidence of any dogs in the possession of or sold by such person being for the primary purpose of breeding or selling.

(b) For purposes of the definition of a "commercial dog breeder" in § 62-12-102 and the evidentiary presumption in subsection (a), dogs possessed or maintained, under a person's immediate control, primarily for any of the following purposes shall not be counted for determining the number of adult intact female dogs:

(1) Herding livestock or other agricultural uses;

(2) Hunting, tracking, chasing, pointing, flushing, or retrieving game; or

(3) Competing in field trials, agility events, confirmation events, obedience trials, tracking trials, hunting tests, or any other similar dog sport designated in rule by the commissioner.

62-12-115. No registrant shall use any location for the purpose of commercial dog breeding, except for use that is de minimis, without first notifying the commissioner that the location will be used for such purpose.

62-12-116.

(a) It is a Class A misdemeanor for a person to engage in the business of commercial dog breeding without obtaining a commercial dog breeder registration from the department.

(b) Except as otherwise provided in this chapter, any knowing violation of this chapter is a Class C misdemeanor.

(c) Nothing in this chapter shall preclude a person violating this chapter from also being prosecuted for any applicable criminal offense.

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is amended by adding the following as a new section:

(a) The following shall be considered an unfair or deceptive act or practice as defined in this chapter and shall constitute a violation of this chapter:

(1) Selling, offering for sale, or advertising any dog while a commercial breeder is unregistered or has had its registration suspended or revoked;

(2) Selling a puppy younger than six (6) weeks old;

(3) Misrepresenting the physical condition or medical history of any dog at the time of the dog's sale, trade, delivery, or other method of transfer. For the purpose of this section "misrepresent" includes, but is not limited to, selling, trading, delivering, or otherwise transferring a dog to another person with the knowledge that the dog has an infection, communicable disease, parasitic infestation, abnormality, or other physical defect that is not made known to the person receiving the dog; or

(4) Altering, counterfeiting, fabricating, or falsifying any health certificate, medical record, on-site inspection, license, or other document that is required in order to be registered as a commercial dog breeder.

(b) Any commercial dog breeder who commits a violation of this section shall be subject to a remedial civil penalty for each separate violation not to exceed one thousand dollars (\$1,000).

(c) Upon reason to believe that a commercial dog breeder is selling dogs without registration as required under the Commercial Dog Breeder Act, compiled in title 62, chapter 12, the attorney general and reporter, after consultation with the director of the division of consumer affairs, may issue a prefiling request for consumer protection information in accordance with § 47-18-106. Should a person deny the representative access to the premises, the attorney general and reporter shall petition, without cost or bond, any circuit or chancery court of competent jurisdiction for an order granting access to the premises and records. This part shall apply to the issuance of the request; provided, however, that nothing in this subsection (c) shall be construed to limit the commissioner of commerce and insurance's authority to investigate violations of this section or of the Commercial Dog Breeder Act, compiled in title 62, chapter 12.

(d) Any person who suffers an ascertainable loss as a result of an unfair or deceptive act or practice described in this section by the conduct of a commercial dog breeder, or any employee or agent of a commercial breeder may bring an action in accordance with § 47-18-109.

(e) Nothing in this section shall limit other remedies provided for by law.

SECTION 3. For the purpose of promulgating rules as authorized by § 62-12-112, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2017, the public welfare requiring it.